

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Souad Moussawi	Team: Team # 2	CCRB Case #: 200903266	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/28/2009 11:18 PM	Location of Incident: West 42nd Street and 7th Avenue	Precinct: 14	18 Mo. SOL 8/28/2010	EO SOL 8/28/2010	
Date/Time CV Reported Mon, 03/02/2009 12:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/04/2009 1:02 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Christophe Cheng	00000	921054	MTS PCT
2. POM Gerard Collins	07851	934668	MTS PCT
3. POM Dennis Westbrook	19650	947605	BN IRT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Young	31816	947624	MTS PCT
2. POM Cornelius Oshea	10319	935419	MTS PCT
3. LT Dennis McCartney	00000	919379	MTS PCT
4. SGT Frank Failla	01557	899192	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Christophe Cheng	Force: Lieutenant Christopher Cheng used physical force against § 87(2)(b)	
B.POM Dennis Westbrook	Force: PO Dennis Westbrook used physical force against § 87(2)(b)	
C.POM Gerard Collins	Force: PO Gerard Collins used physical force against § 87(2)(b)	
D.POM Gerard Collins	Discourtesy: PO Gerard Collins spoke obscenely and/or rudely to § 87(2)(b)	

Synopsis

§ 87(2)(b) filed the following complaint with IAB under IAB log # 09-09709 on March 2, 2009. The complaint was referred to the CCRB on March 4, 2009. On March 1, 2009, at approximately 11:18 PM, § 87(2)(b) was walking westbound on West 42nd Street between 7th Avenue and 8th Avenue in Manhattan. § 87(2)(b) was consuming alcohol while he was walking and was stopped by Lieutenant Christopher Cheng. Lieutenant Cheng attempted to handcuff § 87(2)(b) and § 87(2)(b) struck Lieutenant Cheng's face with his fist. Lieutenant Cheng then struck § 87(2)(b)'s face with his fist (**Allegation A**). Lieutenant Cheng struggled to handcuff § 87(2)(b) and PO Dennis Westbrook, who was off duty at the time, approached Lieutenant Cheng and helped him restrain § 87(2)(b). PO Westbrook and another officer moved § 87(2)(b) into a marked patrol vehicle. PO Westbrook allegedly said, "You wanna hit my lieutenant?" and punched § 87(2)(b) in his mouth (**Allegation B**). PO Gerard Collins then entered the patrol car, sat on § 87(2)(b)'s legs and allegedly punched § 87(2)(b) in his right eye (**Allegation C**). § 87(2)(b) told PO Collins, "I want your name, 'cause you're a coward. How you gonna hit me when I'm in handcuffs." PO Collins allegedly replied, "My name is Officer Collins, you little bitch" (**Allegation D**). PO Collins told § 87(2)(b) to "shut up" or he would get hit again. § 87(2)(b) was arrested for assaulting Lieutenant Cheng.

§ 87(2)(g)

§ 87(2)(g)

Summary of Complaint

Statement to Medical Personnel

On February 28, 2009, § 87(2)(b) told a paramedic that the scratches and hematoma present on his face were a result of being punched while handcuffed in a police vehicle.

IAB Statement

The following statement was retrieved from the IAB log:

Lt. Christopher Cheng observed § 87(2)(b) with an open container of alcohol. When § 87(2)(b) was approached he became belligerent and Lt. Cheng attempted to place him into custody at which point § 87(2)(b) began to violently resist arrest and strike Lt. Cheng. Lt. Cheng sustained abrasions to his face and was treated and released from § 87(2)(b). § 87(2)(b) sustained a swollen lower lip and swollen right eye and was taken to § 87(2)(b) for treatment/observation. § 87(2)(b) did not have any wounds requiring stitched or broken bones. § 87(2)(b) alleged that he was hit in the face by unidentified officers while he was on the ground and handcuffed.

CCRB Statement

§ 87(2)(b) is a § 87(2)(b)-old Hispanic male high school student. § 87(2)(b) is 5'5" tall and weighs 129 pounds. § 87(2)(b) was interviewed at the CCRB on April 16, 2009.

On March 1, 2009, at approximately 11:18 PM, § 87(2)(b) was walking westbound on West 42nd Street between 7th Avenue and 8th Avenue in Manhattan with § 87(2)(b) and § 87(2)(b). They were headed to the AMC movie theater. § 87(2)(b) was carrying a bottle of Bacardi in his jacket and was drinking from it while walking down the street. § 87(2)(b) was stopped by Lieutenant Christopher Cheng. PO Richard Young, § 87(2)(b)'s arresting officer informed him of Lieutenant Cheng's name. Lieutenant Cheng grabbed § 87(2)(b) by the front of his jacket using his right hand and placed § 87(2)(b) against a wall and removed the alcohol container from his jacket. Lieutenant Cheng placed § 87(2)(b)'s hands on the wall and searched him. Lieutenant Cheng asked § 87(2)(b) for his identification and § 87(2)(b) lied and said he was not carrying any. Lieutenant Cheng continued to search § 87(2)(b) and could not find his identification. Lieutenant Cheng then placed § 87(2)(b)'s left hand behind his back and placed handcuffs on it. § 87(2)(b) said, "Stop. I know my rights. You can't just handcuff me and not tell me why I'm under arrest." Lieutenant Cheng told § 87(2)(b) that he was being arrested because he did not have identification on his person. He told Lieutenant Cheng that the

identification was in his pocket and Lieutenant Cheng told § 87(2)(b) that he was going to be arrested anyway because he lied to him. § 87(2)(b) then asked Lieutenant Cheng to issue him a summons and let him go as he was only carrying a small bottle of alcohol and he was just trying “to have a good time.” Lieutenant Cheng asked § 87(2)(b) for his other hand and § 87(2)(b) continued to negotiate his way into a summons. Lieutenant Cheng asked § 87(2)(b) to stop resisting. Lieutenant Cheng said, “I’m gonna slam you if you don’t give me your hand.” Lieutenant Cheng then tried to move § 87(2)(b) to the floor.

§ 87(2)(b) pushed Lieutenant Cheng away from him and hit him on his chin. § 87(2)(b) did not believe that this force hurt Lieutenant Cheng. Lieutenant Cheng then punched § 87(2)(b) on his left temple with his right hand. § 87(2)(b) punched Lieutenant Cheng back with his right fist on his face. § 87(2)(b) did not recall where on Lieutenant Cheng’s face, the punch landed. Lieutenant Cheng then tackled § 87(2)(b) to the floor and turned him over. § 87(2)(b) was faced down on the floor at this point. Lieutenant Cheng placed his knee on top of § 87(2)(b)’s back and handcuffed him. PO Dennis Westbrook, identified by Lieutenant Cheng, approached § 87(2)(b) from across the street and placed his knee on top of § 87(2)(b)’s neck. § 87(2)(b) told PO Westbrook that this force was not necessary. PO Westbrook told § 87(2)(b) to “shut up.” Lieutenant Cheng and PO Westbrook remained on top of § 87(2)(b) at the same time until a patrol car and an unmarked black Chevy Impala arrived at the scene approximately two minutes later. Both uniformed and plainclothes officers exited these vehicles. Among these officers were two females and two to three males. § 87(2)(b) could not further describe these officers and did not have any interaction with them. The officers spoke to Lieutenant Cheng and PO Westbrook. § 87(2)(b) could not hear what they were saying.

PO Westbrook grabbed § 87(2)(b)’s arms and either PO Young or Lieutenant Cheng grabbed his legs and they moved him into the marked patrol vehicle. § 87(2)(b) was placed lying down on his side in the vehicle. His legs were at the door by the sidewalk and his head was at the door by the street. PO Westbrook walked toward the passenger side of the car on the street and opened the door to the car, said, “You wanna hit my lieutenant?” and punched § 87(2)(b) in his mouth. § 87(2)(b) noticed that he started bleeding and he started screaming, saying, “How can you do that when I’m handcuffed?” § 87(2)(b) was mad so he kicked the patrol car window. PO Collins then entered the patrol car and sat on § 87(2)(b)’s legs, and punched § 87(2)(b) in his right eye. § 87(2)(b) told PO Collins, “I want your name, ‘cause you’re a coward. How you gonna hit me when I’m in handcuffs?” PO Collins replied, “My name is Officer Collins, you little bitch.” PO Collins told § 87(2)(b) to shut up or he would get hit again. PO Collins remained on top of § 87(2)(b) until they arrived at the precinct approximately ten minutes later. § 87(2)(b) did not know if there were more than two officers in the car when he was escorted to the precinct. § 87(2)(b) did not recall who the driver was but believed it was PO Young or another uniformed white officer. The driver and PO Collins pulled § 87(2)(b) out of the vehicle and allowed him to walk into the precinct stationhouse. § 87(2)(b) did not request medical attention but he was taken to § 87(2)(b). § 87(2)(b) was not returned fifteen dollars that were confiscated from him during the arrest. A referral to IAB was made regarding this allegation under IAB log #09-09709.

§ 87(2)(b) was not sure what § 87(2)(b) and § 87(2)(b) witnessed but he stated that he did not believe the officers knew that § 87(2)(b) and § 87(2)(b) were with him. § 87(2)(b) believed that § 87(2)(b)’s uncle, § 87(2)(b) and his wife, may have also witnessed this incident. § 87(2)(b) provided several photos that revealed bruising and lacerations to his face and chest.

Results of Investigation

Attempt to Contact Witnesses

§ 87(2)(b) believed that § 87(2)(b) and § 87(2)(b)’s wife (unknown) may have witnessed this incident. § 87(2)(b) provided a telephone number for § 87(2)(b) and an address and a telephone number for § 87(2)(b). A Lexis Nexis search yielded an address for § 87(2)(b). On June 8, 2009, the undersigned investigator contacted § 87(2)(b) via telephone and § 87(2)(b) stated that he did not witness the incident. The undersigned investigator attempted to contact § 87(2)(b) via telephone, five times between May 20, 2009 and July 27, 2009. The undersigned investigator was never able to speak to § 87(2)(b) and was only able to leave him two messages. A first please call letter was sent to § 87(2)(b) on July 27, 2009. A final please call letter was sent to § 87(2)(b) on August 4, 2009. A Lexis Nexis search for § 87(2)(b)

§ 87(2)(b) yielded negative results. The undersigned investigator attempted to contact § 87(2)(b) via telephone on June 8, 2009 to ascertain whether he could provide the contact information for § 87(2)(b). The undersigned investigator left a detailed message for him. To date, § 87(2)(b) and § 87(2)(b) have not contacted the undersigned investigator and the letters sent to them have not been returned to the CCRB.

Video of the Incident

A video of the incident was retrieved from *You Tube*. There is no timestamp on the video. However, Lt. Cheng confirmed that this video is of the incident involving him and § 87(2)(b) which took place on February 28, 2009.

The video reveals that Lt. Cheng attempted to handcuff § 87(2)(b) and this attempt resulted in a struggle which led them to the floor. Lt. Cheng unsuccessfully attempted to turn § 87(2)(b) around for several seconds. § 87(2)(b) continued to struggle and moved off of the floor and to a wall. At this point, § 87(2)(b) punched Lt. Cheng on his face with his right fist approximately four times. A man in the crowd, identified via the investigation as PO Westbrook intervened on behalf of Lt. Cheng and grabbed § 87(2)(b). Finally, he helped Lt. Cheng handcuff § 87(2)(b).

Identification of Officers Interviewed

PO Young was identified by § 87(2)(b) as the arresting officer via his arrest paperwork. PO Young told § 87(2)(b) Lieutenant Cheng's name and PO Collins identified himself to § 87(2)(b). Lieutenant Cheng identified the off duty officer who helped him apprehend § 87(2)(b) as PO Westbrook. PO Collins stated that Lieutenant McCartney operated the vehicle used to transport § 87(2)(b) to the precinct stationhouse. PO Westbrook was identified by Lieutenant Cheng and PO Collins stated that Lieutenant Dennis McCartney was the officer who operated the vehicle used to transport § 87(2)(b) to the stationhouse. Lieutenant McCartney stated that it was rather Sgt. Frank Failla who operated the vehicle.

Lieutenant Christopher Cheng

Lieutenant Christopher Cheng is a § 87(2)(b)-old Asian male. He is 5'11" tall and weighs 195 pounds. Lieutenant Cheng was interviewed at the CCRB on June 23, 2009. On February 28, 2009 Lieutenant Cheng was assigned to Impact and was working alone. He was uniformed and was not assigned to a motor vehicle. Lieutenant Cheng worked from 7:15PM on February 28, 2009 to 4:00AM on March 1, 2009. Lieutenant Cheng's memo book noted that on February, 28, 2009 he worked a tour of 1915x0400, he signed in for impact at 1950 and was present for duty at 2098 solo to the vicinity of midtown sub station, at 2015 he arrived at the sub station post change to foot, at 2305 he picked up someone for an open container on the corner of South West 42nd Street and 7th Avenue, at 2318 this individual was arrested by PO Young for § 87(2)(b), at 2320 he arrived at § 87(2)(b) on line of duty with PO Rigoa, at 0206 he was treated and released by § 87(2)(b)."

On February 28, 2009 Lieutenant Cheng was headed East on foot on West 42nd Street and 7th Avenue. Lieutenant Cheng observed § 87(2)(b) drink from a bottle of Bacardi Rum. Lieutenant Cheng approached § 87(2)(b) and asked him for some identification in order to issue him a summons. He asked § 87(2)(b) for an ID three times and § 87(2)(b) refused to provide one. § 87(2)(b) stated that he did not have any ID. Lieutenant Cheng walked § 87(2)(b) up to the wall and attempted to place him under arrest. § 87(2)(b) asked why he was being arrested and Lieutenant Cheng replied, "Because you have no ID in order for me to issue you a summons." Lt Cheng handcuffed § 87(2)(b)'s left hand and § 87(2)(b) became belligerent. He pulled his left hand from Lieutenant Cheng and placed both of his hands against his chest. Lieutenant Cheng instructed § 87(2)(b) to stop resisting the arrest and to place his hands behind his back. § 87(2)(b) pulled away from Lieutenant Cheng and a struggle ensued between them. Moments later they were on the ground and began to wrestle. Lieutenant Cheng attempted to handcuff § 87(2)(b) and § 87(2)(b) punched Lieutenant Cheng with his right hand. Lieutenant Cheng unsuccessfully attempted to use his radio to call for assistance. § 87(2)(b) continued to punch Lieutenant Cheng in the face. Lieutenant Cheng tried to move and turn § 87(2)(b) in order to handcuff both of his hands. § 87(2)(b) got on his feet and struck Lieutenant Cheng on his head with his left hand which was handcuffed. Lieutenant Cheng described the hit as a sharp pain and realized that he got hit with the handcuff. § 87(2)(b) continued to punch Lieutenant Cheng's face. As Lieutenant Cheng recovered from

the hard hit, he noticed that he was bleeding. Lieutenant Cheng punched § 87(2)(b) and struggled to handcuff him. A stranger from the crowd, who was later identified as an off duty officer by the name of PO Westbrook, intervened on behalf of Lieutenant Cheng. They both handcuffed § 87(2)(b). Lieutenant Cheng called for back up and several officers arrived on the scene. PO Collins arrived, lifted Lieutenant Cheng and embraced him. Other officers provided Lieutenant Cheng with paper towels to wipe the blood off of his face. PO Ligao transported Lieutenant Cheng to the hospital.

Lieutenant Cheng did not use physical force against § 87(2)(b) after he was handcuffed and did not observe any other officers do so. Lieutenant Cheng did not use profanity toward § 87(2)(b) and did not hear any other officers do so. Lieutenant Cheng did not know if § 87(2)(b) was intoxicated and did not know the size of the Bacardi Rum bottle he drank from. Lieutenant Cheng recalled that the bottle was ¼ full. Lieutenant Cheng did not search § 87(2)(b). Eventually one of the officers had to search § 87(2)(b). Lieutenant Cheng did not threaten to slam § 87(2)(b) if he did not let him handcuff him. Lieutenant Cheng only recalled PO Collins and PO Young from the officers who responded to the incident. PO Young was assigned to the arrest. PO Westbrook was the only black male officer on the scene. PO Westbrook is an impact officer in Brooklyn North IRT. Lieutenant Cheng did not see who escorted § 87(2)(b) to the vehicle because he was busy cleaning up his face. Lieutenant Cheng did not see § 87(2)(b) after the incident. Lieutenant Cheng provided several photos that revealed a cut to his forehead and a bloody nose.

PO Dennis Westbrook

PO Dennis Westbrook is a § 87(2)(b)-old black male. He is 5'5" tall and weighs 170 pounds. PO Westbrook was interviewed at the CCRB on September 22, 2009.

On February 28, 2009 PO Westbrook was off duty. At approximately 11:30PM on West 42nd Street and 7th Avenue, PO Westbrook observed § 87(2)(b) and Lieutenant Christopher Cheng in a struggle. They were on the floor and Lt. Cheng was attempting to handcuff § 87(2)(b). § 87(2)(b) was resisting arrest and then repeatedly struck Lt. Cheng's face with his fist. PO Westbrook intervened on behalf of Lt. Cheng and helped Lt. Cheng secure § 87(2)(b). He used his handcuffs to restrain § 87(2)(b) and then removed § 87(2)(b) to a patrol vehicle with the help of other officers. PO Westbrook does not recall which officers assisted him in placing § 87(2)(b) in the patrol vehicle. PO Westbrook did not punch § 87(2)(b) in the face and did not see other officers do so. PO Westbrook did not speak discourteously to § 87(2)(b) and did not hear any other officers do so.

PO Gerard Collins

PO Gerard Collins is a § 87(2)(b)-old white male. He is 6'4" tall and weighs 218 pounds. PO Collins was interviewed at the CCRB on June 17, 2009. On February 28, 2009, PO Collins was assigned to impact and was working with PO Ryan O'Shea. They were both uniformed and assigned to marked RMP #5929. They worked from 6:00PM on February 28, 2009 to 2:00AM on March 1, 2009. PO Collins noted in his memo book that at 23:05 he received a distress call from corner of West 42nd Street and 7th Avenue and at 23:25 he arrived on scene."

On February 28, 2009, at approximately 11:00PM, PO Collins heard Lieutenant Cheng indicate his designation as south impact lieutenant. He did not give his location and there was distress in his voice. Lieutenant Cheng made more than four calls in one minute and several units attempted to reach him to find out where he was. PO Collins and PO O'Shea were ten blocks south of Lieutenant Cheng. They patrolled the area where they thought Lieutenant Cheng might be and quickly noticed a large crowd of around 100 people on 42nd Street and 7th Avenue and they parked their car on the East Bound side of the street. PO Collins and PO O'Shea pushed through the crowd and found Lieutenant Cheng on the floor with § 87(2)(b). § 87(2)(b) was handcuffed and laying on his back rolling on the ground and Lieutenant Cheng was attempting roll him on his stomach. § 87(2)(b) was yelling that the reason he was fighting was because one of his friends recently was killed by police officers. PO Collins did not observe any injuries on § 87(2)(b). Lieutenant Cheng had a cut on his forehead and was bleeding. PO Collins did not observe Lieutenant Cheng search § 87(2)(b). PO Collins was not aware of anyone in the crowd being with § 87(2)(b) and § 87(2)(b) did not say anyone was with him. No one in the crowd said that they were with § 87(2)(b). PO Collins did not hear Lieutenant Cheng tell § 87(2)(b) "I'm gonna slam you if you

don't give me your hand." PO Collins did not observe the struggle during the incident but he did observe a video of it on *You Tube* before the interview.

PO Collins and PO O'Shea were the first two officers to arrive on the scene. PO Collins called for backup and many officers responded. PO Collins did not know who these officers are specifically. PO Collins recalls that there were plainclothes units who responded as they were working in the subway. PO Collins did not recall of any black officers that responded.

PO Collins and PO O'Shea placed § 87(2)(b) in a marked RMP. They each grabbed one of his arms and placed him in through the back passenger seat by the sidewalk. PO Collins did not recall what § 87(2)(b) was wearing. PO Collins knows § 87(2)(b) was stopped because he was drinking but did not know more information about this and did not see any containers. § 87(2)(b) attempted to kick out the passenger side window and attempted to bang his face against the passenger side window. PO Collins entered the back of the RMP to ride with § 87(2)(b) to the precinct. In the vehicle, PO Collins had to restrain § 87(2)(b)'s legs as he was kicking but did not sit on them. PO Collins was on § 87(2)(b)'s right side. PO Collins assisted in transporting § 87(2)(b) to the precinct, lodged him and did not interact with him again. PO O'Shea did not ride along with PO Collins to the precinct. The only other officer in the vehicle was Lieutenant McCartney who was the operator. No other officers entered the vehicle. § 87(2)(b) continued screaming that police officers killed his friend. PO Collins did not see anyone punch § 87(2)(b) in his mouth after he was handcuffed. PO Collins did not see blood or injuries on § 87(2)(b) and § 87(2)(b) did not request medical attention from PO Collins and did not ask PO Collins for his name. PO Collins did not tell § 87(2)(b) "My name is Officer Collins, you little bitch." PO Collins did not punch § 87(2)(b) in the eye or threaten to hit him again if he did not shut up. Approximately two to three minutes later, they arrived at the precinct.

PO Collins did not know § 87(2)(b) before the incident and did not see him after he lodged him in the cell. PO Collins was not involved in § 87(2)(b)'s transportation to the hospital. PO Collins does not know whether there were any other officers injured during the incident other than Lieutenant Cheng. PO Collins was not involved in the processing of § 87(2)(b)'s arrest and when he viewed § 87(2)(b)'s arrest photo in which there were injuries visible on his face, PO Collins recalled that § 87(2)(b) sustained injuries to his face after banging his face on the left passenger window of the patrol car.

The investigator showed PO Collins a video recording of this incident following his testimony. PO Collins did not recognize the officer who helped Lieutenant Cheng apprehend § 87(2)(b).

PO Richard Young

PO Richard Young is a § 87(2)(b)-old white male. He is 6'3" tall and weighs 200 pounds. PO Young was interviewed at the CCRB on June 24, 2009. On February 28, 2009 PO Young was assigned to impact and was working alone. He was uniformed and was not assigned to a motor vehicle. PO Young worked from 6:30PM on February 28, 2009 to 4:05AM on March 1, 2009. His memo book noted that at 24:19 he arrived at scene post 14, at 23:18 he arrived to a selfless post, at 1:47 he arrested § 87(2)(b) for assaulting Lieutenant Cheng and transported him to the mid town south precinct, at 23:85 § 87(2)(b) was escorted to § 87(2)(b) via an FDNY Ambulance for swelling and bruising, at 02:45 PO Young returned to Manhattan Taskforce South to launch prisoner, at 04:25 he filed a complaint under § 87(2)(b) and arrest number § 87(2)(b) at 8:30 he completed the job."

On February 28, 2009 PO Young was assigned to a post on 8th Avenue. He received a call via his radio indicating that a lieutenant was being assaulted. The impact sergeant instructed all impact units to canvass 42nd Street and 7th Avenue. When PO Young arrived on the scene, § 87(2)(b) was already in the back of the patrol car. PO Young did not actually see § 87(2)(b) in the car nor did he see who else was in the car with § 87(2)(b). Lieutenant Cheng informed PO Young that § 87(2)(b) was stopped for an open container and asked if PO Young wanted to process the arrest. PO Young agreed to and Lieutenant Cheng left the scene in an ambulance. PO Young observed a pint sized Bacardi Rum bottle but did not recover it from § 87(2)(b).

Approximately ten to thirty minutes later, at the precinct stationhouse, PO Young processed § 87(2)(b)'s arrest. PO Young went to § 87(2)(b)'s holding cell to obtain his ID. § 87(2)(b) behaved irately.

PO Young did not recall the officers who responded to the scene. There were many people on the scene when PO Young arrived. PO Young was not familiar with the black male officer (referred to as PO Westbrook) present on the night of the incident. Someone informed PO Young that PO Westbrook happened to exit the subway station during the incident and thus helped Lieutenant Cheng. While § 87(2)(b) was in the hospital, he continuously stated that he got hit but never specified whether he was hit before or after he was handcuffed. He screamed that the officers "beat the hell" out of him and that it was police brutality. § 87(2)(b) named an officer who hit him. PO Young only recalled that the officer's name started with a "C" and was not Lieutenant Cheng. PO Young did not witness any of the officers using physical force against § 87(2)(b). PO Young did not use any physical force against § 87(2)(b).

Lieutenant Dennis McCartney

Lieutenant Dennis McCartney is a § 87(2)(b)-old white male. He is 5'10" tall and weighs 215 pounds. Lieutenant McCartney was interviewed at the CCRB on July 28, 2009.

On February 28, 2009, Lieutenant McCartney worked as platoon commander from 2:45PM to 11:30PM. He worked with PO Maloney and was assigned to RMP#1516. They were both uniformed. Lieutenant McCartney's memo book noted that at 23:00 he needed additional units at 7th Avenue and 42nd Street.

On February 28, 2009 at approximately 11:30PM, Lieutenant McCartney was in the 14th Precinct stationhouse about to have his meal when he heard Lieutenant Christopher Cheng on the radio making an emergency call. Lieutenant Cheng was not clear but sounded in distress. Central disregarded Lieutenant Cheng's call and Lieutenant McCartney instructed the units on patrol to canvass for Lieutenant Cheng. Lieutenant McCartney then headed to the scene of the incident without PO Maloney. When he arrived, he observed § 87(2)(b) handcuffed on the ground and observed Lieutenant Cheng with a cut on his forehead. Lieutenant McCartney did not recall which officers were on the scene at the time.

Several officers then placed § 87(2)(b) in a marked patrol car. Lieutenant McCartney did not recall which vehicle this was; it was not his. Lieutenant McCartney does not recall which officers placed § 87(2)(b) in this vehicle and he did not assist in this process. Lieutenant McCartney was one the sidewalk at this time and he observed § 87(2)(b) in the vehicle kicking the windows of the vehicle. Several officers approached the vehicle and yelled at § 87(2)(b) to stop kicking the windows. Lieutenant McCartney did not recall which officers these were. Lieutenant McCartney approached the vehicle, opened the door in order to restrain § 87(2)(b). He grabbed § 87(2)(b)'s shirt and held § 87(2)(b)'s legs and was struggling to restrain him. PO Collins then tapped Lieutenant McCartney on his shoulder and offered to help escort § 87(2)(b) to the stationhouse. PO Collins then entered the vehicle and left with § 87(2)(b). Sgt. Failla was the operator of this vehicle. Lieutenant McCartney did not observe any other officers approach the vehicle. Lieutenant McCartney did recall seeing PO Westbrook standing next to Lieutenant Cheng during the incident and but did not see him approaching the vehicle in which § 87(2)(b) was placed.

Lieutenant McCartney did not use physical force against § 87(2)(b) and did not observe any other officers do so. Lieutenant McCartney did not use profanity when speaking to § 87(2)(b) and did not hear any other officers do so. Lieutenant McCartney did not see § 87(2)(b) after he was escorted to the stationhouse and was present on the scene of the incident for approximately ten minutes.

Sgt. Frank Failla

Sgt. Frank Failla is a § 87(2)(b)-old white male. He is 5'8" tall and weighs 200 pounds. Sgt. Failla was interviewed at the CCRB on August 27, 2009.

Sgt. Failla worked from 7:20PM on February 28, 2009 to 4:17AM on March 1, 2009. He was uniformed, worked alone and was assigned to a marked patrol vehicle but does not know the RMP number of that vehicle. Sgt. Failla did not have any entries in his memo book related to this incident.

On February 28, 2009, at approximately 11:18PM, Sgt. Failla responded to a distress call by Lieutenant Cheng who was located at West 42nd Street and 7th Avenue in Manhattan after a canvass of the area. When Sgt. Failla arrived to the scene he observed Lieutenant Cheng with a bloody face and a laceration to his forehead. Sgt. Failla tended to this wound as he is a trained EMT. § 87(2)(b) was handcuffed when Sgt. Failla arrived on the scene and Lieutenant McCartney advised Sgt. Failla to transport § 87(2)(b) to the precinct stationhouse.

Sgt. Failla moved § 87(2)(b) into his vehicle without assistance and § 87(2)(b) did not resist this. Sgt. Failla did not recall § 87(2)(b) kicking the vehicle windows. § 87(2)(b) did scream. Sgt. Failla did not recall any officers entering the vehicle at this point. An officer helped escort § 87(2)(b) to the precinct stationhouse but Sgt. Failla did not recall who this officer was or whether it was PO Collins. Sgt. Failla did not hear any officers speak discourteously to § 87(2)(b) or punch him after he was handcuffed. Sgt. Failla also did not do any of these things. It took approximately two minutes to transport § 87(2)(b) to the stationhouse. Sgt. Failla did not observe any injuries on § 87(2)(b) and did not hear § 87(2)(b) complain of any injuries.

Medical Documents

§ 87(2)(b) medical records regarding § 87(2)(b) indicate that on March 1, 2009, § 87(2)(b) was observed by medical personnel and had scattered abrasions as well as bruising, swelling and lacerations on his face (Encl. 4I-Q).

Arrest History

§ 87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Police Documents

Arrest report

§ 87(2)(b) was arrested by PO Richard Young on February 28, 2009 for § 87(2)(b). § 87(2)(b)'s arrest report indicates that he was observed by Lieutenant Cheng in possession of an open bottle of Bacardi. Lieutenant Cheng then approached § 87(2)(b) and requested his identification. § 87(2)(b) stated that he did not have identification. Lieutenant Cheng instructed § 87(2)(b) to place his hands behind his back and § 87(2)(b) began punching Lieutenant Cheng with closed fists. Lieutenant Cheng sustained contusions and lacerations. A crowd then formed and traffic was blocked (Encl. 9A).

Line of Duty Injury Report

The line of duty injury report indicates that Lt. Cheng was punched by § 87(2)(b) causing his nose to bleed. Additionally it indicates that § 87(2)(b) struck Lt. Cheng with a partially handcuffed hand causing a laceration to his head (Encl. 6CC-6DD).

Civilian CCRB History

This is the first complaint on file for § 87(2)(b) (Encl. 2).

Officer CCRB History

PO Dennis Westbrook, PO Gerard Collins and Lieutenant Christopher Cheng

In his 1-year-tenure, PO Westbrook has had no prior substantiated allegations (Encl. 1A). In his 5-year-tenure, PO Collins has had no prior substantiated allegations (Encl. 1B). In his 11-year-tenure, Lieutenant Cheng has had no prior substantiated allegations (Encl. 1C).

Conclusions and Recommendations

Subject Officer Identification

§ 87(2)(b) stated that Lieutenant Cheng punched him. § 87(2)(g) § 87(2)(b) alleged that he was punched by the black male officer who assisted Lieutenant Cheng in apprehending him. § 87(2)(b) § 87(2)(g)

§ 87(2)(g) § 87(2)(b) further alleged that PO Collins punched him and said, “My name is Officer Collins, you little bitch.” § 87(2)(g)

Undisputed/Disputed Facts

It is not disputed that § 87(2)(b) punched Lieutenant Cheng in the face before Lieutenant Cheng punched § 87(2)(b)

§ 87(2)(g)

Assessment of the Evidence

§ 87(2)(b) alleged that Lieutenant Cheng punched him in his face. § 87(2)(b) maintained that he had not struck Lieutenant Cheng prior to this punch and merely tried to push Lieutenant Cheng’s face away from him. Lieutenant Cheng stated that he punched § 87(2)(b) in self-defense in response to § 87(2)(b) punching him. The video footage of this incident confirmed Lieutenant Cheng’s account of this incident § 87(2)(g) OATH has upheld the use force by officers against civilians in instances of self-defense. In Police Department v. Stiso (OATH, 1999), PO Stiso struck a civilian with his flashlight, causing a laceration requiring 7 stitches, after the civilian punched the officer, causing a well-documented injury. OATH found that the officer acted reasonably, citing self-defense after having been punched. § 87(2)(g)

§ 87(2)(b) also alleged that he was punched by PO Westbrook and PO Collins after he was handcuffed. PO Westbrook and PO Collins denied these allegations and the officers interviewed in this case denied seeing PO Collins and PO Westbrook punch § 87(2)(b) § 87(2)(g)

§ 87(2)(b) further alleged that PO Collins told him, “My name is PO Collins you little bitch.” PO Collins denied this allegation and the officers interviewed in this case denied hearing PO Collins use profanity toward § 87(2)(b) § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

Allegation A: Lieutenant Christopher Cheng used physical force against § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) OATH has upheld the use force by officers against civilians in instances of self-defense. § 87(2)(g)

Allegation B: PO Dennis Westbrook used physical force against § 87(2)(b)

Allegation C: PO Gerard Collins used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation D: PO Gerard Collins spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: